Supreme Court, U.S.
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No. 99-1988

In The
Supreme Court Of The United States

STATE OF CONNECTICUT,
Petitioner

v.

JEFFREY L. DONAHUE,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION

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16 pp

QUESTION PRESENTED FOR REVIEW

Whether the court below properly concluded that the police officer did not have a reasonable suspicion to stop and detain the Respondent in the absence of circumstances (apart from his mere presence in an area believed by the police to have experienced a recent increase in the level of reported criminal activity) tending to indicate that the Respondent was engaged, or was about to be engaged, in criminal activity.

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JURISDICTION

The Petitioner's reliance upon 28 U.S.C. §1257 as providing the basis of jurisdiction for this Court to entertain its Petition is misplaced. The decision of the Connecticut Supreme Court sought to be reviewed does not involve resolution of a federal question. Further, there was no federal question presented to or ruled upon by the Connecticut Supreme Court.

For these reasons alone, the Petition ought to be denied.

STATEMENT OF THE CASE

The Petitioner's statement of the case in part misstates the ruling of the Connecticut Supreme Court. In Respondent's view, these misstatements bear on what issues would be before the Court if certiorari were granted. The Respondent respectfully offers the following statement of the case.

This case arises out of the arrest and prosecution of the Respondent for one count of Operation While Under the Influence of Liquor or Drug, in violation of Section 14-227a of the Connecticut General Statutes, arising out of an incident occurring on December 10, 1997 in Windham, Connecticut. The Respondent filed a Motion to Suppress on April 14, 1998, seeking suppression of: any statements of the Respondent (whether oral or written); the results of any "field tests" conducted prior to his arrest; and the results of any chemical test administered to the Respondent following his arrest. As grounds for this motion, the Respondent alleged that: (1) the initial stop of the Respondent by the

investigating officer was unlawful in that it was without reasonable suspicion to believe that the Respondent was engaged, or was about to be engaged, in criminal conduct; (2) the evidence sought to be suppressed was obtained as a result of the aforedescribed unlawful stop of the Respondent; and (3) the chemical test was administered by a person not then-certified by the Department of Public Health to conduct such a test.

The trial court held a hearing on the Respondent's motion on May 14, 1998. At the hearing, the State and the Respondent stipulated that the officer conducting the chemical test was not properly certified at the time the test was administered as was required by state law. For this reason, the trial court granted so much of the Respondent's motion as it pertained to the results of the chemical test. Following an evidentiary hearing, the trial court denied the balance of the Respondent's motion. In its oral decision, the court found that the Respondent had been stopped by the arresting officer, but also found that there was reasonable suspicion to justify the stop at that time.

Following this action by the court on his motion to suppress, the Respondent filed a written conditional plea of nolo contendere to one count of Operation While Under the Influence of Liquor or Drug, in violation of Section 14-227a of the Connecticut General Statutes, conditioned upon his right to appeal from the denial of his Motion to Suppress. The trial court accepted the Respondent's plea, found him guilty, and sentenced him to six months in the custody of the commissioner of correction, suspended the execution of that sentence after the service of forty-eight consecutive hours, and placed the Respondent on conditional discharge for a period of six months, with a number of special conditions not germane to these proceedings. In lieu of the forty-eight hours in confinement, the court ordered the Respondent to complete one hundred hours of community service in accordance with a written plan of community service submitted by the Respondent. In addition, the court fined the Respondent and imposed costs.

The Respondent appealed to the Appellate Court from the judgment of conviction rendered upon his conditional plea of nolo contendere. The Appellate Court affirmed the judgment of the trial court. State v. Donahue, 53 Conn.App. 497, 729 A.2d 255 (1999). In its opinion, the Appellate Court concluded that the facts of the case supported the trial court's determination that a reasonable and articulable suspicion existed to justify the stop of the Respondent's vehicle; therefore, the trial court properly denied the Respondent's motion to suppress.

Thereafter, the Respondent petitioned for certification to appeal to the Connecticut Supreme Court. That court granted the petition for certification to appeal, limited to the issue of whether the Appellate Court properly concluded that the police had reasonable and articulable suspicion to justify stopping the Respondent's vehicle. State v. Donahue, 249 Conn. 931, 733 A.2d 850 (1999).

The Connecticut Supreme Court reversed the judgment of the Appellate Court. State v. Donahue, 251 Conn. 636, 742 A.2d 775 (1999), *rehearing denied* (March 8, 2000). In a 4-3 *en banc* decision, the court held that, under the applicable provisions of the Connecticut Constitution and precedents of that court construing those provisions, the officer had no reasonable and articulable suspicion that the Respondent had committed or was about to commit a crime. With only one dissent, the court also rejected, again on state constitutional grounds, the Petitioner's alternative ground for affirmance of the Appellate Court decision, namely that the Respondent had not been seized at all. In its opinion, the state supreme court specifically noted that it was deciding the case on state constitutional grounds and declined to address the Respondent's additional claims that his rights under the United States Constitution were violated. State v. Donahue, 251 Conn. at 644 n.10. In dicta, the majority observed that in its view the detention of the Respondent was in violation of the standard set forth in Terry v. Ohio, 392 U.S. 1, 20-22, 88 S.Ct., 1868, 20 L.Ed.2d 889 (1968). In its note, the majority

distinguished the federal precedents relied upon by the dissent from the case at hand in light of the additional facts present in those precedents which supported a finding of reasonable suspicion, facts which were absent in the case under review. State v. Donahue, 251 Conn. at 644 n.10.

REASONS FOR DENYING THE WRIT

A. Absence of a Federal Question

Jurisdiction of this Court under 28 U.S.C. §1257 is predicated on the presence of a substantial federal question in the case. In the present case, the federal question was presented to the Connecticut Supreme Court to the extent that a Fourth and Fourteenth Amendment claim was made in the Respondent's original motion to suppress. However, the court below specifically, and in clear and express terms, declined to address this claim grounded in the federal constitution. The court's holding was grounded upon its interpretation of the provisions of Article First, Section 7 of the Connecticut Constitution. State v. Donahue, 251 Conn. at 648. As noted *supra*, the court below explicitly eschewed reliance upon the federal constitution in its holding but merely, in dicta, noted its disagreement with the applicability of the federal precedents relied upon by the dissent on the dispositive issue in the case.

In addition, there was an adequate and independent state ground for the decision of the court below. As discussed in the majority opinion, Connecticut has developed a substantial body of law on the issue of investigative detention, a body of state law which it relied upon in reaching its decision. This is not a case where the interpretation of the state constitutional provision at issue is governed by federal precedents, nor is the state constitutional ground interwoven with federal law. The clear language of the majority opinion leaves no doubt that the decision was compelled by an analysis of state constitutional jurisprudence; the opinion contains a plain statement to this effect. *Ibid.*. For this reason, Petitioner's reliance on Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983) is unavailing.

B. Absence of a Compelling Reason to Grant Certiorari

Rule 10 of the Supreme Court states that certiorari will be granted only for compelling reasons. The petitioner here has provided no such reason, and has in fact rested its claim on a basis which this Court, in Rule 10 itself, indicates will rarely warrant a grant of certiorari: the misapplication of a properly stated rule of law. The Respondent disagrees with the Petitioner and contends that the Connecticut Supreme Court properly applied the principle that an investigative detention is warranted only when reasonable suspicion exists. However, there is no question that the Connecticut court properly stated the principle to be applied; the parties only diverge when the application of that principle is examined in the context of the facts of this case. In the absence of a compelling reason to grant the petition, it ought to be denied.

CONCLUSION

In the absence of a substantial federal question and in the absence of a compelling reason, the petition for writ of certiorari filed on behalf of the State of Connecticut ought to be denied.

Respectfully submitted,

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